

Decision 97-12-105 December 16, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA**

Rulemaking on the Commission's Own Motion
into Universal Service and to Comply with the
Mandates of Assembly Bill 3643.

R.95-01-020
(Filed January 24, 1995)

Investigation on the Commission's Own Motion
into Universal Service and to Comply with the
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Appendix A: Appointments to the ULTSMB

INTERIM OPINION

This decision elaborates on the role and purpose of the Universal Lifeline Telephone Service Marketing Working Group (ULTSMWG). Today's decision also appoints to the ULTSMWG those persons listed in Appendix A.

The responsibilities of the ULTSMWG, as described in Decision (D.) 96-10-066 and this decision, are more consistent with those of entities we consider to be "advisory boards" to the Commission than with entities we consider to be "working groups." Therefore, in order to better reflect ULTSMWG's responsibilities, we hereby change the name of the ULTSMWG to the Universal Lifeline Telephone Service Marketing Board (ULTSMB).

I. Background

In D.96-10-066, the California Public Utilities Commission (CPUC or Commission) established the ULTSMB as the entity responsible for marketing the Universal Lifeline Telephone Service (ULTS)¹ program in a competitive environment. In particular, the ULTSMB was given the responsibility by the Commission to develop a budget for marketing the ULTS program, to devise competitively neutral marketing strategies, and to oversee the implementation of ULTS marketing campaigns. In carrying out these duties, the Commission required that the ULTSMB operate at all times under the direction, control, and approval of the CPUC. The Commission also retained for itself all policy and decision-making authority pertaining to the ULTS program.

Commission staff were directed by D.96-10-066 to convene a workshop to identify candidates for the ULTSMB; and to discuss the goals, purpose, and

¹ The ULTS program provides subsidized basic telephone service to qualifying residential subscribers pursuant to Public Utilities (PU) Code § 871 et seq. Under the ULTS program, a ULTS customer may select any carrier from those that provide residential local exchange service in the customer's area. The selected carrier may then submit a claim to the ULTS program for reimbursement. At the present time, there are approximately 3 million ULTS subscribers in California.

Footnote continued on next page

organizational framework of the ULTSMB. Two workshops were held,² and staff submitted its workshop report to the Commission on February 28, 1997.

Ordering Paragraph 14.c.(1) of D.96-10-066 stated that staff's report would be followed by a Commission decision appointing members to the ULTSMB and elaborating on the ULTSMB's role and purpose. This decision fulfills that commitment. In addition, this decision identifies and describes the rules that the ULTSMB must follow in its role as an advisory board to the Commission, including rules pertaining to the procurement of services, per diem, expense reimbursement, conflicts of interest, indemnification of board members, and compliance with the Bagley-Keene Open Meeting Act.

II. Purpose and Goals of the ULTSMB

Most of the workshop participants believe the purpose of the ULTS marketing program is to help achieve the Commission's goal of a 95% subscribership rate among all customer groups.³ Some participants, however, questioned whether the 95% subscribership rate should be achieved on average for all customers statewide or for each customer group. According to these participants, trying to bring each customer group's subscribership rate up to 95% may retard the effort to increase the overall subscribership rate by diverting funds from mass marketing approaches.

In D.96-10-066 we stated that our goal for a 95% subscribership rate applies to each residential customer group.⁴ However, the purpose of the ULTS program is related to, but distinct from, our goal of a 95% subscribership rate for each residential customer group. More specifically, the ULTS program is intended to provide

² One workshop was held in San Francisco on December 10, 1996, and another workshop in Los Angeles on December 11, 1996.

³ Both the workshop report and D.96-10-066 indicate that customer groups may be defined in various ways, including by income, ethnicity, and spoken language.

⁴ D.96-10-066, Appendix B, Rule 3.

affordable basic telephone service to all low-income households regardless of whether or not a particular low-income household belongs to customer group with a 95% subscribership rate.⁵ Success by the ULTS program in providing telephone service to low-income households will, in turn, help achieve our goal of a 95% subscribership rate for all residential customer groups.

We expect the ULTSMB to focus on achieving the ULTS program goal of providing basic phone service to all qualifying low-income households. Since the funds available to the ULTSMB are limited,⁶ the ULTSMB should prioritize the expenditure of its marketing budget to reflect the most pressing needs of the ULTS program. We agree with many workshop participants that the most urgent task for the ULTS program is to provide telephone service to low-income households currently without such service. To meet this urgent need, we shall direct the ULTSMB to initially devote 80% of its marketing budget to campaigns designed to bring basic telephone service to qualifying households currently without telephone service.

The ULTSMB should devote the remaining 20% of its marketing budget to closing the gap between the total number of households with phone service who qualify for the ULTS program and the number of such households that actually use the program. This priority is consistent with the mandate in PU Code § 871.5(c) that every household qualified to participate in the ULTS program should be afforded an opportunity to do so.⁷ The previously described 80-20 ratio for the expenditure of the ULTSMB's marketing budget should reverse over time as the ULTSMB achieves success in bringing the ULTS program to qualifying households lacking telephone service. The

⁵ D.96-10-066, mimeo., p. 217.

⁶ The ULTSMB's total budget cannot exceed the average of the annual ULTS marketing expenses reimbursed to all carriers for the last three years that carriers provided ULTS marketing services. (D.96-10-066, mimeo., p. 233)

⁷ PU Code § 871.5(c) states that "Every means should be employed by the commission...to ensure that every person qualified to receive lifeline telephone service is informed of and is afforded the opportunity to subscribe to that service."

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ULTSMB's budget should also decrease over time as the ULTSMB achieves success in fulfilling our priorities for the ULTS marketing program.

A final matter regarding the role and purpose of the ULTSMB concerns the view expressed by many workshop participants that the ULTSMB should be able to make policy recommendations to the Commission about any issue relevant to the ULTS program. We disagree. The purpose of the ULTSMB is to perform the tasks assigned to it in D.96-10-066, and making policy recommendations regarding the ULTS program is simply outside the scope of the tasks given to the ULTSMB in D.96-10-066.⁸

On the other hand, we would welcome recommendations from the ULTSMB on how to use existing funding levels for the ULTS marketing program to reduce the total number of households that qualify for ULTS that are without phone service. We would also appreciate recommendations on how to narrow the gap between the total number of households with phone service who qualify for the ULTS program and the total number of such customers who actually use the program. Any recommendations by the ULTSMB on these topics should be made in its annual report to the Commission which we discuss in Section X of this decision. However, the ULTSMB should not act upon its recommendations without our authorization. Such authorization, if any, will be forthcoming in our annual resolution regarding the ULTSMB's budget that is discussed later in this decision.

III. Rules Governing ULTSMB Contracts

A. General Contracting Guidelines

In D.96-10-066 we indicated that many of the ULTSMB's functions would be contracted out to third parties.⁹ As an advisory body to the Commission, the ULTSMB

⁸ Individual members of the ULTSMB are free to use their own time and funds to develop and submit recommendations regarding the ULTS program.

⁹ D.96-10-066, mimeo., p. 234 and Conclusion of Law No. 162.

must comply with the State's contracting and procurement rules. We shall also require the ULTSMB to keep records sufficient to demonstrate its compliance with the State's contracting and procurement rules.

To assure compliance with the State's rules, the ULTSMB shall coordinate its contracting activities with Commission staff and submit its contracts to our staff for review and approval.¹⁰ So that the ULTSMB may better coordinate its contracting activities with the Commission's staff, the Director of the Telecommunications Division shall designate one person to serve as a liaison between the ULTSMB and all Commission personnel who may have a role in assisting the ULTSMB enter into contracts.

Each ULTSMB contract should be signed by a majority of the ULTSMB's members. Payments made to third parties for services rendered pursuant to the ULTSMB's contracts should come from monies held in ULTS Trust¹¹ which is overseen by the ULTS Administrative Trust Committee (ULTS Trust Committee).¹² To initiate a payment from the ULTS Trust, the ULTSMB shall prepare a payment voucher that provides the ULTS Trust Committee with sufficient information to make the payment.¹³ All vouchers must be signed by a majority of the ULTSMB's members. The ULTSMB shall transmit the voucher to the ULTS Trust Committee which will then take the necessary steps to ensure that a check is issued to the payee designated on the voucher. The ULTS Trust Committee may not refuse to make a payment to any entity designated

¹⁰ The ULTSMB's proposed RFPs should also be reviewed and approved by Commission staff.

¹¹ D.96-10-066 at page 233 states that funding for the ULTSMB's activities is to come from the ULTS Trust.

¹² The ULTS Trust Committee was created by the Commission in D. 87-10-088 to function as an administrative body with five appointed members operating under the control of the Commission. The purpose of the ULTS Trust Committee is to act as the Commission's fiscal agent responsible for receiving and disbursing funds from the ULTS Trust. Although the ULTSMB draws its funding from the ULTS Trust, the ULTSMB is fully independent of the ULTS Trust Committee.

¹³ At a minimum, the voucher should identify the payee, the amount owed, the services rendered in return for the payment, and the contract under which the services were rendered.

on a payment voucher submitted by the ULTSMB unless the ULTS Trust Committee suspects fraud or other abuse. The ULTSMB should retain a copy of all its vouchers and related information; while the ULTS Trust Committee should keep a record of all its payments made pursuant to the vouchers.

B. Contracts for Market Studies

The ULTSMB should contract for one or more market studies to gather the information necessary for the development of ULTS marketing campaigns that will achieve the previously stated priorities for the ULTS program.¹⁴ We expect the market studies to determine the total number of residential households that qualify for the ULTS program broken down by those who are without phone service, those with phone service but not using the ULTS program, and those who use the ULTS program.¹⁵ This data should be further broken down by customer segments (i.e., geographic, ethnic, etc.). In addition to these market studies, the ULTSMB should work with community groups in assessing the needs for ULTS marketing, identifying barriers to the use of the ULTS program, and in developing the most effective marketing campaigns.

We shall leave it up to the ULTSMB to determine whether the ULTS marketing campaigns should use a mass market approach, a customer-segment-by-customer segment approach, or some combination of the two. But whatever the approach selected by the ULTSMB, it should be designed to achieve with the available funds the greatest reduction possible in the number of households that are without phone service and greatest increase possible in the use of the ULTS program among those who qualify for the program and who currently have phone service.

¹⁴ The cost of the market studies should not be considered part of the ULTSMB's marketing program that is subject to the 80-20 allocation described earlier in this decision.

¹⁵ The ULTSMB should update its market studies every three years.

C. Contracts with Advertising Agencies and Community-Based Organizations

Once the ULTSMB has formulated a coherent plan to achieve our stated objectives for the ULTS marketing campaigns, the ULTSMB should contract with one or more qualified advertising agencies, community-based organizations¹⁶ (CBOs), and other entities to implement the plan.

To assure the most effective use of the ULTS marketing budget, all the ULTSMB's contracts for advertising campaigns, community outreach, etc., should contain clear numerical goals for: (1) reducing the number of households which qualify for the ULTS program that are without phone service, and (2) closing the gap between the number of households with phone service that qualify for the ULTS program and the actual number of such households using the program. The contracts should also contain incentives to achieve specified numerical goals. For example, a contract could provide \$20,000 to a CBO to bring 1,000 households without phone service into the ULTS program (i.e., \$20 per household signed up). If the CBO signs up more than 1,000 households, it could receive an additional \$1 for every household it signed up for a total \$21 per household. Conversely, if fewer than 1,000 households were signed up, the CBO should receive only \$19 per household.

As another means to assure the most effective use of the ULTS marketing budget, starting in the year 2000 the ULTSMB should only contract with entities that have proven to be the most cost-effective in bringing phone service to households without service, or in bringing into the ULTS program households with phone service that qualify for the ULTS program but which do not use the program. The ULTSMB may also contract with new entities that promise to be more cost-effective than the entities then under contract.¹⁷

¹⁶ For purposes of this decision, CBOs are defined as government agencies and consumer- and public-interest groups.

¹⁷ Entities whose existing contracts have not been renewed due to inferior performance may continue to compete for new contracts, but the ULTSMB should be cautious about contracting with such entities.

The ULTSMB should oversee and monitor the progress of the entities contracted to implement the ULTS marketing campaigns. In addition, the ULTSMB should continually assess the extent to which its marketing campaigns are accomplishing the goals of the ULTS program. One key measure of the success would be a reduction in the number of households which qualify for the ULTS program that are without phone service. Another key measure of success would be an increase in the percentage of households eligible for the ULTS program that actually use the program. The ULTSMB may use other reliable and verifiable measures to assess the success of its marketing campaigns. Based on its ongoing evaluation, the ULTSMB should alter its marketing campaigns, as necessary, to achieve the goals of the ULTS program.

D. Contracts for Support Services

Some workshop participants proposed that the ULTSMB retain staff to perform clerical, administrative support, and other services related to the ULTSMB's operations. We would prefer for the ULTSMB to not hire any staff. Instead, the ULTSMB should rely upon its own resources or the support staff already in place for the ULTS Trust Committee. If these resources prove inadequate, the ULTSMB should next look to our own staff for any services the Board may need. As a last resort, the ULTSMB may procure support services (e.g., accounting, administrative, clerical, legal, etc.) on a short-term and temporary basis in a way that fully complies with the State's contracting and procurement rules.¹⁸

IV. ULTSMB Budget and Program Expenditures

In D.96-10-066 we instructed the ULTSMB to prepare an annual budget for advertising campaigns, community outreach, and related ULTSMB expenses.¹⁹ We also

¹⁸ Before seeking to procure services from external sources, the ULTSMB should obtain verification that the resources available through the Commission or the ULTS Trust Committee are inadequate to support the ULTSMB.

¹⁹ D.96-10-066, mimeo., pp. 233-234.

set a cap for the ULTSMB's total budget equal to the average annual ULTS marketing expenses that were reimbursed to all carriers during the last three years that carriers marketed the ULTS program.²⁰ However, in D.96-10-066 we cut-off the funding for the carriers' ULTS marketing programs beginning with the effective date of that decision.²¹ Therefore, in determining the cap for the ULTSMB's budget, we shall use the three-year period ending on September 30, 1996.

For the 1998 calendar year, the ULTSMB should submit its proposed budget to the Director of the Telecommunications Division within 120 days from the date of this decision. The budget should cover the administrative expenses of the ULTSMB, costs associated with the marketing studies described earlier in this decision, and other activities related to the development of the ULTS marketing program.²² The budget should also cover the estimated cost to implement marketing campaigns during 1998. After reviewing the proposed budget, the Director of the Telecommunications Division shall prepare a resolution for our consideration that adopts a budget for 1998.

On an ongoing basis, the ULTSMB should file at the Commission's Docket Office on October 1 of each year its budget for the following calendar year. To help us better monitor and control the activities of the ULTSMB, we believe the ULTSMB's annual report (discussed later in this decision) should be submitted with its proposed budget. Notice of the annual report and proposed budget should appear in the Commission's Daily Calendar along with instructions on how to obtain these documents. We will then issue a resolution adopting a budget for the ULTSMB in December. The ULTSMB's budget, once it has been approved by the Commission, should be included as a line item in the ULTS Trust Committee's total budget.

²⁰ Ibid., p. 233.

²¹ Ibid., pp. 234-235.

²² To assure compliance with our requirement that the ULTSMB's budget not exceed the average of the annual ULTS marketing expenses reimbursed to carriers for the three-year period ending September 30, 1996, the ULTSMB should include this figure in each of its annual budget proposals.

Workshop participants suggested that the Commission allocate some funds to cover the initial administrative expenses of the ULTSMB. They also suggested that the Commission provide funds to enable interim marketing activities while the ULTSMB develops its marketing programs. We agree that the ULTSMB should have immediate access to monies sufficient to pay for costs associated with its meetings, such as per diem and travel costs, pending the Commission's approval of its 1998 budget. The ULTSMB should also have immediate access to funds to pay for the marketing studies so that the ULTSMB may develop a sound marketing plan as soon as possible. Accordingly, we shall instruct the ULTS Trust Committee to take the necessary steps to pay for these costs. We shall not, however, provide funds for marketing activities while the ULTSMB is in the process of developing its marketing programs. Such an approach runs the risk of spending public funds on ill-conceived marketing activities.

The ULTSMB should maintain its own detailed financial statements to help the Commission monitor and oversee the ULTSMB's operations and budget. The annual audit of the ULTS Trust performed in accordance with Section IV.11 of the ULTS Trust Committee's charter should be expanded to include the separate financial statements of the ULTSMB.²³ This audit should also include an examination of the ULTSMB's contracts for the purpose of determining whether the contractual services paid for were actually provided, and whether payments to the service providers were made in accordance with contractual terms and conditions. A copy of the audit should be provided to the Directors of the Consumer Services Division and the Telecommunications Division.

V. Composition of the ULTSMB and Appointment of ULTSMB Members

A. Composition of the ULTSMB

In D.96-10-066 we stated that the ULTSMB is to consist of twelve members broken down as follows: three representatives from the large and medium size local

²³ The cost of the audit related to the ULTSMB should be included as part of the ULTSMB's overall budget.

exchange carriers (LECs); three representatives from the interexchange carriers (IECs) or the competitive local exchange carriers (CLCs); three representatives from CBOs; one representative from a small LEC; one representative from the wireless carriers; and the head of the Commission's Consumer Services Division (CSD) or his/her designee.²⁴

Workshop participants suggested several modifications to the composition of the ULTSMB specified in D.96-10-066. The first modification concerned the possibility that a carrier which is both a CLC and an IEC might have two representatives on the ULTSMB. Workshop participants felt it would be unfair for a single carrier to have two members on the ULTSMB, and suggested that the Commission limit each telecommunications carrier holding company to a single member on the ULTSMB. We find the suggestion to be reasonable and shall adopt it.

The second suggestion of the workshop participants was to increase the number of CBO representatives in the ULTSMB in order to allow for greater geographic representation. In the alternative, participants suggested that the Commission ensure that Northern and Southern California each have one CBO representative in the ULTSMB. The California Department of Consumer Affairs (DCA) further suggested that the ULTSMB, in addition to CBO representatives from Northern and Southern California, also include a CBO member who represents all types of consumers.

We shall decline to specify a specific geographic composition for the CBO representatives in the ULTSMB. There are simply too many distinct geographic areas in California for each area to be represented in the ULTSMB and still keep the size of the group from becoming unmanageably large. For example, not only are Northern and Southern California distinct geographic regions, but so is Central California. Southern California itself is arguably composed of two separate geographic regions centered around Los Angeles and San Diego. Urban, suburban, and rural geographic distinctions could also be used as a basis for selecting CBO representatives for the ULTSMB.

²⁴ D.96-10-066, mimeo., page 233.

Instead of appointing CBO representatives to the ULTSMB based upon their geographic origin, we believe a better approach is to build upon DCA's recommendation that the ULTSMB include at least one CBO member who represents all types of consumers. However, instead of only one CBO representative for all types of consumers, we would prefer that each of three CBO members in the ULTSMB represent a broad cross section of consumers, the public interest, and geographic regions. We would also prefer that CBO representatives in the ULTSMB have some knowledge and experience in telecommunications and the ULTS program.

The workshop participants also suggested that the ULTSMB be expanded to include a non-voting member from the Commission's staff in addition to the CSD's voting member. The duty of the non-voting staff member would be to act as a liaison between the ULTSMB and the Commission for the purpose of seeking informal Commission guidance for the ULTSMB. The non-voting member would eliminate any conflicts of interest the CSD member may have in fulfilling the dual rules of voting member and Commission liaison. We find this recommendation to be reasonable and shall instruct the Director of our Telecommunication Division to appoint one person from his/her staff to fulfill this role.²⁵

B. Appointment of ULTSMB Members

As part of the workshop process, staff identified 17 candidates for the ULTSMB -- 12 candidates for the three CBO positions in the ULTSMB and five candidates for the eight carrier positions in the ULTSMB.²⁶ Subsequent to the issuance of staff's workshop report, two additional candidates came forward for the CBO positions in the ULTSMB.

D.96-10-066 specified that the eight carrier representatives in the ULTSMB should come from the following four carrier subgroups: (i) three representatives from

²⁵ The designated staff person of the Telecommunications Division should also serve as the ULTSMB's liaison for obtaining assistance from Commission staff regarding ULTSMB contracts as described previously in this decision.

²⁶ The names and resumes of the 17 candidates identified during the workshop process are contained in Appendix G of staff's workshop report.

the large and medium size LECs; (ii) three representatives from the IECs or the CLCs; (iii) one representative from a small LEC; and (iv) one representative from the wireless carriers. Of the five carrier candidates, two are candidates for subgroup (i), two are candidates for subgroup (ii), one is a candidate for subgroup (iii), and there is no candidate for subgroup (iv). There was no opposition to appointing any of the five carrier candidates.

We shall appoint the five carrier candidates since there is no opposition to the appointments, and because appointing these candidates will not result in overrepresentation for any carrier subgroup or in any single carrier having more than one representative in the ULTSMB. The names of the candidates appointed to the ULTSMB are identified in Appendix A to this decision.

We shall not fill the three vacant carrier positions in the ULTSMB with non-carrier representatives. Instead, one of the first tasks for the ULTSMB shall be to solicit candidates for the vacant carrier positions. As candidates are identified, the ULTSMB should submit to the Executive Director a letter nominating the candidates. Notice of the candidates' nominations should appear in the Commission's Daily Calendar. This notice should include instructions on how to obtain the resume of each candidate and how to submit comments on each candidate to the Director of the Telecommunications Division within 30 days from the date each candidate's name appeared in the Daily Calendar. If no timely opposition to a candidate is received, the Executive Director may appoint that person to the ULTSMB. On the other hand, if timely opposition is received, then the Telecommunications Division shall prepare a resolution on whether or not to appoint the candidate to the ULTSMB. The previously described procedure shall be followed until all the carrier vacancies in the ULTSMB are filled. In the meantime, the ULTSMB is authorized to carry on with its duties and responsibilities despite the vacancies.²⁷

²⁷ A quorum for ULTSMB meetings shall consist of a majority of the members of the filled positions.

We previously stated in this decision our preference for appointing CBO candidates who represent a broad cross section of consumers, the public interest, and geographic regions. We also hope to appoint CBO members with knowledge and experience in telecommunications and the ULTS program. After carefully reviewing the resumes of the 14 CBO candidates, we find that the nominee from DCA best exemplifies the qualities that we seek, and we shall appoint this person to the ULTSMB. Of the 13 remaining CBO candidates, we shall appoint Mateo R. Camarillo and Barbara Perkins, nominated by Public Advocates and the Geenlining Institute, respectively, since they appear to have the best balance of the qualities we seek.

D.96-10-066 also reserved one position in the ULTSMB for the Director of the CSD or his/her designee. So that the ULTSMB may begin its work as soon as possible, the Director of the CSD should provide written notice to the ULTSMB of the name of the CSD person designated to serve in the ULTSMB within 20 days from the date of this decision. The Director of the Telecommunications Division should likewise provide written notice within 20 days to the ULTSMB of the name of the person designated to serve in the ULTSMB as a liaison between the group and the Commission. The Directors of CSD and the Telecommunications Division may change the person each has designated to serve in the ULTSMB at any time by providing written notice to the other members of the ULTSMB.

C. Term of Appointment

Workshop participants formed a consensus that CBO members should serve on the ULTSMB for a term of two years and carrier members for a term of three years. The shorter term for CBO members reflected the concern that most CBOs could not absorb the financial and resource impact caused by having a representative in the ULTSMB for more than two years.

There was also a consensus that members' terms should be staggered to provide continuity to the ULTSMB. To arrange for staggered terms, workshops participants suggested that some of the initial CBO members serve two-year terms and some serve three-year terms. Likewise, some of the initial carrier members should serve two-year

terms and the rest should serve three-year terms. Participants agreed that one-year terms should be avoided due to the learning curve for new members. Participants also agreed that no person should serve for more than two consecutive terms.

We shall adopt the recommendations of the workshop participants that CBO members serve on the ULTSMB for staggered terms of two years and that carrier members serve for staggered terms of three years.²⁸ No person shall serve more than two terms with the exception that an appointment to a position with less than a full term remaining shall not count towards the prohibition against serving more than two terms. For the initial members, one CBO member shall serve a two-year term while the other two CBO members shall initially serve three-year terms. Similarly, half of the carrier members will initially serve two-year terms while the other half will serve three-year terms. The three vacant carrier positions in the ULTSMB shall be assigned to the positions that have an initial two-year term.

The terms for the initial positions are set forth in Appendix A. However, the members of the ULTSMB may reallocate the initial two- and three-year positions among the carriers if a majority of the ULTSMB members agree to do so, but the ULTSMB must accomplish the reallocation by no later than its third formal meeting. Likewise, the ULTSMB may reallocate the initial two- and three-year positions among the CBOs if a majority of the ULTSMB members agree to this by no later than the third formal meeting. The ULTSMB should provide the Commission's Executive Director with written notification of any reallocation of Board positions made pursuant to this paragraph.

Members' terms shall commence on January 1 and end on December 31. The initial two-year terms will expire on December 31, 1999, while the initial three-year terms will expire on December 31, 2000. Members may voluntarily leave the ULTSMB, and any member may be removed by the Commission's Executive Director at any time. In the event that a member leaves the ULTSMB prior to the expiration of his or her

term, the ULTSMB should seek to fill the vacant position for the remainder of its term using the same procedure to fill the initial vacant carrier positions that was described earlier in this decision.

D. Solicitation and Appointment of New Members

In selecting future members, many workshop participants urged that announcements soliciting nominations be distributed as widely as possible, including contacting all CBOs. Workshop participants also suggested that the ULTSMB form a subgroup to develop solicitations.

We agree that the ULTSMB should take steps to search for candidates to fill vacancies. In searching for candidates, the focus should be on finding persons with the qualifications described in this decision. In addition to the work of the ULTSMB in searching for candidates, we intend to solicit recommendations for qualified candidates from other sources as vacancies develop.

As terms expire, we shall appoint new members in concert with the budget and annual report cycle for the ULTSMB. Earlier in this decision, we instructed the ULTSMB to submit its annual report and proposed budget on October 1 of each year. Consistent with this cycle, the ULTSMB should submit on October 1, as part of its annual report and budget package, its nominees to fill the vacancies created by expiring terms.²⁹ We shall then appoint members to the ULTSMB in December as part of our resolution on the budget for the ULTSMB. Persons appointed to ULTSMB should assume their posts beginning on January 1.

²⁸ Representatives from CSD and the Telecommunications Division shall have no fixed term.

²⁹ The ULTSMB should provide public notice in the Commission's Daily Calendar of all the candidates for expiring ULTSMB positions by no later than November 1. The notice should provide instructions on how to obtain the candidates' resumes and how to submit written comments on one or more of the candidates to the Director of the Telecommunications Division by no later than 30 days from the date the notice appears in the Daily Calendar.

VI. Compensation for ULTSMB Members

In D.96-10-066 we stated that ULTSMB members should be compensated from the ULTS Trust for the expenses they incur to participate in ULTSMB.³⁰ Workshop participants asked for clarification as to what types of expenses could be reimbursed and if CBO members could receive compensation for the time they spend on matters related to the ULTSMB.

We shall apply to the ULTSMB the same policy for per diem and expense reimbursement that we adopted in D.97-04-044 and D.97-09-117 for the Low Income Governing Board and the California Board for Energy Efficiency.³¹ Consistent with these decisions, ULTSMB members who are employees of State governmental agencies³² and utilities shall not receive per diem or expense reimbursement from the ULTSMB. Furthermore, ULTSMB members employed by organizations with funding available to support the member's participation in the ULTSMB should use such funding, where appropriate, to defray the cost of the member's participation. Finally, for each ULTSMB member who is an employee of a non-State governmental agency, trade association, or CBO, payments for per diem and expense reimbursement related to the member's participation in the ULTSMB shall go to the member's employer unless the member can show justification for receiving these monies directly.

Consistent with D.97-04-044 and D.97-09-117, the amount of per diem provided to eligible members of the ULTSMB shall be \$300 for each day of meetings and \$200 if the meeting lasts for less than approximately two hours. However, there shall be no per diem for preparation work; and there shall be no per diem or expense reimbursement related to meetings of any subcommittees of the ULTSMB. In addition, ULTSMB

³⁰ D.96-10-066, mimeo., pp. 233 and 234.

³¹ D.97-09-117, mimeo., pp. 40-44.

³² ULTSMB members who are State employees should process their claims for expense reimbursement in accordance with the procedures of their respective State agencies.

members shall not be eligible to receive intervenor compensation pursuant to PU Code § 1801 et seq., for their work related to the ULTSMB. In establishing the aforementioned level of per diem, we purposely do not set levels so high as to substitute for all comparable employment since ULTSMB membership should be considered a public service.

The amount and type of expense reimbursement provided to eligible members of the ULTSMB shall conform to the standards set forth in Resolution F-621 dated November 9, 1988, which is consistent with the practice we adopted in D.97-04-044 and D.97-09-117.³³ Resolution F-621 allows for reimbursement of actual expenses related to travel, meals, parking, and other incidentals up to the limits currently in effect and applicable to Commission staff on official duty. Those limits include up to \$37.00 for meals during each 24-hour period and up to \$79.00 plus tax for lodging per night except that in state-designated high-cost areas, including San Francisco, the limit shall be \$110.00 plus tax per night. Private automobile use will be reimbursed at a rate of up to 24 cents per mile or the current government reimbursement rate. Airfare will be reimbursed up to the lowest available airfare with reference to the amount of notice given for the meeting being attended. ULTSMB members will be reimbursed for reasonable miscellaneous expenses including cab fare, parking, and bridge tolls. Each item of travel expense claimed in the amount of \$5.00 or more must be substantiated by a receipt, except for meals. There shall be no reimbursement for meal or lodging expenses incurred within 50 miles of ULTSMB members' headquarters, or for lodging expenses incurred within 50 miles of their primary residence. Finally, ULTSMB members may be reimbursed for all reasonable costs necessarily incurred by them related to the operation of the group, including photocopying, FAXing, telephone calls, and supplies.

³³ Resolution F-621 established a fair and reasonable level of expense reimbursement to the public members of Commission-authorized advisory boards.

Claims for per diem and expense reimbursement should be approved by a Program Manager (or equivalent level) in the Commission's Telecommunications Division.³⁴ The ULTS Trust Committee shall take the steps necessary to make the actual payments for per diem and expense reimbursement using monies from the ULTS Trust. The annual audit of the ULTS Trust performed in accordance with Section IV.11 of the ULTS Trust Committee Charter should be expanded to include an examination of the veracity and accuracy of claims for per diem and expense reimbursement by ULTSMB members.

VII. Indemnification

Members of the ULTSMB who are not members of the Commission staff are uncompensated servants of the State of California within the meaning of Government Code § 810.2. Accordingly, the State will indemnify them as it indemnifies its compensated employees, and Board members will be provided with representation for their acts done within the course and scope of the services they perform for the ULTSMB pursuant to Government Code §§ 825-825.6 and 995-996.6.

The ULTSMB's budget may be used to purchase errors and omissions (E&O) or similar insurance³⁵ for ULTSMB members for their acts done within the course and scope of the services they perform for the Board to the extent that such activities are held not to be indemnified by the State under Government Code §§ 825-825.6 or 995-996.6.³⁶

³⁴ The cost for per diem and expense reimbursement should not be considered part of the ULTSMB's marketing program that is subject to the 80-20 allocation described earlier in this decision.

³⁵ The cost to purchase E&O insurance should not be considered part of the ULTSMB's marketing program that is subject to the 80-20 allocation described earlier in this decision.

³⁶ Indemnification and the purchase of E&O insurance for ULTSMB members is consistent with what the Commission has allowed for the members of several other advisory boards. See, for example, D.97-09-117, mimeo., pp. 44-45.

The same indemnification standards we adopt for members of the ULTSMB should likewise be applied to members of the ULTS Trust Committee for their activities related to the ULTSMB. The ULTS Trust Committee may also use monies from the ULTS Trust to purchase E&O insurance that would include coverage for their activities associated with the ULTSMB.

VIII. Conflicts of Interest

Workshop participants observed that a conflict of interest would occur if ULTSMB members' organizations directly or indirectly obtain funds from the ULTSMB.³⁷ To address conflicts of interest, workshop participants recommended a case-by-case prohibition on voting by ULTSMB members on contracts in which they have conflicts.

To avoid what we consider to be direct conflicts of interest, no organization may receive funds from the ULTSMB if the organization has a representative on the ULTSMB; and no person from an organization receiving funds from the ULTSMB shall be appointed to the Board. So that a determination can be made if a conflict of interest exists, all members of the ULTSMB should disclose any association they may have with entities seeking funds from the ULTSMB. In addition, all candidates for the ULTSMB should disclose whether they have any association with any person, group, or entity receiving funds from the Board.

To further address potential conflicts of interest, we shall require the members of the ULTSMB to comply with the Fair Political Practices Commission (FPPC) standard Conflict of Interest Code (2 Cal. Code of Regulations § 18730). A primary purpose of the FPPC's Conflict of Interest Code will be to preclude members of the ULTSMB from having a pecuniary interest in potential recipients of any funds under the control of the ULTSMB. For purposes of applying these rules, all voting members of the ULTSMB

³⁷ Workshop participants also believed a conflict of interest would occur if a carrier had a representative on both the ULTS Trust Committee and the ULTSMB. We see no such conflict since each body functions independently of the other body.

shall be defined as “designated employees” required to disclose the following “economic interests”:

Any investment or business position in, or income from, any of the following:

1. An entity seeking to provide any product or service related to the ULTSMB’s function or that has plans to come before the ULTSMB to seek funds from the monies under the control of this group.
2. A parent or a subsidiary of an entity described in subsection (1).

Government Code § 18730 (b)(7) mandates that statements of economic interests be reported on forms prescribed by the FPPC. To carry out this mandate, the ULTSMB should designate one of its members to be responsible for obtaining the necessary reporting forms from the Commission’s filing officer in the Executive Director’s Office. This same person should also be responsible for collecting statements of economic interests from the members of the ULTSMB and timely submitting these forms to the Commission’s filing officer.

The conflict-of-interest rules for the ULTSMB adopted by this decision shall be subject to change as conditions warrant. If either the ULTSMB or the Telecommunications Division believes the conflict of interest rules need to be revised, they should first consult with the Legal Division and then take the appropriate steps to advise the Commission of the proposed revision.³⁸ If we agree that a revision to the conflict-of-interest rules applicable to the ULTSMB is warranted, we shall issue a decision or resolution, as appropriate, to implement the change.

³⁸ This letter should be served on the service list for this proceeding.

IX. Compliance with the Bagley-Keene Open Meeting Act

The ULTSMB is a “state body” as defined by Government Code § 11121.8:

“[A] ‘state body’ means any advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multi-member advisory board of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.” (Gov. Code, § 11121.8.)

As a state body, the ULTSMB is subject to the Bagley-Keene Open Meeting Act (Gov. Code §§ 11120, et seq.). This Act requires, among other things, that the meetings of the ULTSMB be open to the public, and that public notice of the meetings (including a brief, general description of the business to be transacted or discussed) be provided 10 days in advance. Notice may be satisfied through the use of the Commission’s Daily Calendar.

In D.97-09-117 we provided guidance on several issues related to compliance with the Bagley-Keene Open Meeting Act (Bagley-Keene Act).³⁹ Among the issues addressed were teleconferencing, voting, public participation, and the inspection and distribution of public records. The members of the ULTSMB should follow the guidance contained in D.97-09-117 except for the portion of the decision pertaining to teleconferencing when there is no quorum in one location which is the subject of an application for rehearing. Instead, the ULTSMB should look to Government Code § 11123 to govern teleconferencing pending further instructions on teleconferencing that will be contained in our forthcoming decision on the application to rehear D.97-09-117.

For additional guidance on compliance with the Bagley-Keene Act, each member of the ULTSMB should obtain from the Director of the Telecommunications Division a publication by the State Attorney General’s Office regarding the Act, along with a 1997 supplement to this publication. The members of ULTSMB should review these

³⁹ D.97-09-117, mimeo., pp. 47-59.

documents and conduct their activities consistent with the guidance embodied in these documents.

X. Annual Report of the ULTSMB

To help us supervise the activities of the ULTSMB, we established a requirement in D.96-10-066 for the ULTSMB to submit an annual report to the Commission starting one year after the formation of the ULTSMB.⁴⁰ We also required in D.96-10-066 that the annual report “detail the [ULTSMB’s] activities during the past year, the increase or decrease in ULTS customers, telephone subscribership rates by income, ethnicity, and geography criteria, and [the ULTSMB’s] expectations and objectives during the coming year.”⁴¹ We shall expand these reporting requirements to include the following information regarding the objectives for the ULTS marketing program articulated in this decision:

- a) A list and description of market studies commissioned during the year and/or completed during the year.
- b) The total number of residential households that qualify for the ULTS program broken down by those that are without phone service, those with phone service but not using the ULTS program, and those who use the ULTS program. This data should be further broken down by customer segments (i.e., geographic, ethnic, etc.).
- c) The number of contracts with advertising agencies, CBOs, and other persons and entities contracted to bring the ULTS program to qualifying households. For each contract the following information should be provided: (i) the identity of the contractor; (ii) the duration of the contract; (iii) a description of the contract and its purpose; (iv) dollar amounts owed and paid under the contract; (v) numerical goals associated with the contract; (vi) the contractor’s success in achieving the numerical goals; (vii) a description of the rewards and penalties; (viii) the dollar amount of any award or penalty; and (ix) the cost effectiveness of

⁴⁰ D.96-10-066, mimeo, p. 234.

⁴¹ Ibid.

the contractor, e.g., dollars spent to provide ULTS to a household that was without phone service.

- d) The percentage of the ULTSMB's marketing budget as well as the total amount of money spent by the ULTSMB during the period covered by the annual report to bring basic telephone service to households that are currently without such service and which qualify for the ULTS program.
- e) The percentage of the ULTSMB's marketing budget as well as the total amount of money spent by the ULTSMB during the period covered by the annual report to close the gap between the total number of residential customers with phone service who qualify for the ULTS program and the number of such customers who actually use the program.
- f) The total number of qualifying households without phone service that the ULTSMB brought into the ULTS program during the period covered by the annual report.
- g) The average amount spent by the ULTSMB during the period covered by the annual report to bring into the ULTS program a qualifying household that lacked phone service.
- h) The total number of qualifying households that already had phone service which the ULTSMB brought into the ULTS program during the period covered by the annual report.
- i) The average amount spent by the ULTSMB during the period covered by the annual report to bring into the ULTS program a qualifying household that already had phone service.
- j) The number of households that dropped out of the ULTS program during the year and the reason(s) why they dropped out.
- k) Other reliable and verifiable benchmarks used by the ULTSMB to measure the success of its marketing campaigns.
- l) An explanation by the ULTSMB as to why it believes its marketing campaigns during the year achieved with the available funds (i) the greatest reduction possible in the number of households that qualified for phone service and which were without phone service and (ii) the greatest increase possible in the use of the ULTS program among qualifying households which already had phone service.

- m) Changes to the ULTS marketing campaigns in the forthcoming year that will make the campaigns more cost-effective in achieving the Commission's objectives for the ULTS marketing program.
- n) Audited financial statements for the previous calendar year.

The workshop participants further suggested that the ULTSMB's annual report include information regarding changes in penetration rates for "targeted" community segments. We believe it would be more useful and shall require the annual report to have information about the change in the penetration rate for each customer group within the universe of households eligible for the ULTS program.

Except for Item (n) above, the period covered by the annual report should be July 1 through June 30. The ULTSMB's annual report should be signed by all of its members. Any member of the ULTSMB may include a separate statement in the annual report expressing his or her disagreement with any of the information contained in the report. A copy of the annual report should be provided to each Commissioner, the assigned Administrative Law Judge, and the Directors of the Consumer Services Division and the Telecommunications Division. Notice of the annual report should be included in the Commission's Daily Calendar along with instructions on how to obtain a copy of the report.

The first annual report shall be due on October 1, 1998. However, the first annual report shall not include audited financial statements for the prior calendar year since there will not yet have been a "prior" year. We also recognize that some of the information that we require to be included in the annual report will come from the market studies which the ULTSB is to conduct every three years. Where there is no new information available, the ULTSMB needs only to include in its annual report the information contained in its most recent market studies.⁴²

⁴² The annual report should indicate when it is presenting information from market studies that are more than one year old.

XI. Next Steps for the ULTSMB and the ULTS Trust Committee

The members of the ULTSMB appointed by this decision should hold their initial meeting no later than 30 days from the effective date of this decision. Within 120 days the ULTSMB should submit a proposed budget for calendar year 1998 as well as a draft charter for our review.⁴³ The Director of the Telecommunications Division, after consulting with the Legal Division on the draft charter, shall prepare for our consideration a resolution regarding the adoption of the ULTSMB's charter and budget for 1998.

The decision imposes new obligations on the ULTS Trust Committee which will require the Committee to revise its charter in order to carry out the obligations. So that the Committee is aware of its new obligations, the Executive Director should serve a copy of this decision on each member of the ULTS Trust Committee. Following receipt of this decision, the ULTS Trust Committee shall submit a draft revised charter to the Director of the Telecommunications Division no later than 120 days from today. The revised charter should conform to the instructions given in this decision regarding contracting, per diem, expense reimbursement, indemnification, conflicts of interest, and compliance with the Bagley-Keene Open Meeting Act. The Director of the Telecommunications Division, after consulting with the Legal Division on the revised charter, shall then prepare for our consideration a resolution regarding the adoption of the revised charter of the ULTS Trust Committee.

Findings of Fact

1. The ULTSMB was given the responsibility in D.96-10-066 for developing a budget for statewide marketing of the ULTS program, devising competitively neutral marketing strategies for the ULTS program, and overseeing the implementation of ULTS marketing campaigns.

⁴³ An appropriate model for the ULTSMB's charter would be the charters that we anticipate we will soon be approving for the California Board for Energy Efficiency and the Low Income Governing Board.

2. The role and purpose of the ULTSMB is consistent with entities that are advisory bodies to the Commission.

3. The ULTSMB operates at all times under the direction, control, and approval of the Commission.

4. D.96-10-066 directed Commission staff to convene a workshop to discuss the goals, purpose, and organizational framework of the ULTSMB; and to identify candidates for the ULTSMB. Staff convened two workshops and submitted its workshop report to the Commission on February 28, 1997.

5. Staff's workshop report identified issues pertaining to the role and purpose of the ULTSMB. Staff's report also identified 17 candidates for the ULTSMB.

6. The purpose of the ULTS program is to provide affordable basic telephone service to low-income households.

7. PU Code § 871.5(c) states that every person qualified to receive service under the ULTS program should be informed of the program and be afforded the opportunity to subscribe to the program.

8. The ULTS marketing program will be more effective if it is based on reliable data on the total number of residential households that qualify for the ULTS program broken down by those who are without phone service, those with phone service but not using the ULTS program, and those who use the ULTS program.

9. The ULTS program will be more effective if the entities contracted to market the ULTS program have incentives to achieve the objectives of the ULTS marketing program.

10. The ULTS program will be more effective if, over time, the ULTSMB only contracts with entities that have proven to be the most cost-effective in achieving the marketing objectives of the ULTSMB marketing program.

11. The ULTS program will be more effective if the ULTSMB works with CBOs and other groups to assess the needs for ULTS marketing and identify barriers to the use of the ULTS program.

12. The purpose of the ULTS program is more likely to be accomplished if the ULTSMB devises a marketing plan that seeks to achieve with available funds (a) the greatest reduction possible in the number of households that qualify for the ULTS program that are without phone service and (b) the greatest increase possible in the use of the ULTS program among those who qualify for the program.

13. The purpose of the ULTS program is more likely to be accomplished if the ULTSMB continually assesses the extent to which its marketing campaigns are achieving the goals set forth in Finding of Fact No. 12 and then modifies its campaigns, as necessary, to better achieve these goals.

14. Making policy recommendations to the Commission is beyond the scope of the tasks assigned to the ULTSMB in D.96-10-066.

15. D.96-10-066 required the ULTSMB to submit an annual report to the Commission containing specified information.

16. D.96-10-066 instructed the ULTSMB to submit an annual budget for advertising campaigns, community outreach, and related ULTSMB expenses. This decision also set a cap for the ULTSMB's budget equal to the average annual ULTS marketing expenses that were reimbursed to all carriers during the last three years that carriers marketed the ULTS program.

17. D.96-10-066 provided funding for the ULTSMB budget from the ULTS Trust which is administered by the ULTS Trust Committee.

18. The Commission could better monitor and control the activities of the ULTSMB if the ULTSMB submitted its proposed budget and annual report at the same time.

19. Members of the ULTSMB will incur expenses to participate in this board.

20. Allowing the ULTSMB to engage in marketing activities before the ULTSMB develops a coherent marketing plan could result in spending public funds on ill-conceived marketing activities.

21. Paying for market studies pending the approval of the ULTSMB's budget would help accelerate the ULTSMB's development of a sound marketing strategy.

22. The ULTSMB may need to procure administrative, clerical, accounting, legal, and other support services from third parties in order to carry out its functions.

23. D.96-10-066 stated that the ULTSMB is to consist of twelve members broken down as follows: three representatives from the large and medium size LECs; three representatives from the IECs or the CLCs; three representatives from CBOs; one representative from a small LEC; one representative from the wireless carriers; and the head of the Commission's Consumer Services Division (CSD) or his/her designee.

24. Workshop participants reached a consensus that no single carrier or its holding company should more than one members on the ULTSMB.

25. Workshop participants proposed to increase the number of CBO representatives in the ULTSMB to allow for greater geographic representation.

26. Workshop participants proposed that the ULTSMB include at least one CBO representative each from Northern and Southern California.

27. There are too many distinct geographic areas in California for each area to be represented in the ULTSMB and still keep the size of the group from becoming unmanageably large.

28. Adding a non-voting member to the ULTSMB from the Telecommunications Division to act as a liaison between the ULTSMB and the Commission would eliminate any conflicts the CSD member may have in fulfilling the dual roles of voting member and Commission liaison.

29. The workshop process resulted in only five candidates for the eight positions in the ULTSMB reserved for the carriers.

30. There was no opposition to appointing any of the five carrier candidates.

31. Appointing all five of the carrier candidates will not result in overrepresentation of any carrier subgroup in the ULTSMB or in any carrier having more than one representative in the ULTSMB

32. The workshop process resulted in 12 candidates for the three ULTSMB positions reserved for representatives of CBOs. Two additional candidates for the CBO positions came forward after the issuance of staff's workshop report.

33. The three CBO candidates named in Appendix A of this decision are the most qualified to serve in the ULTSMB.

34. Workshop participants recommended that CBO members serve in the ULTSMB for a term of two years and that carrier members serve for a term of three years.

35. Staggered terms for the members of the ULTSMB would help provide for continuity and the proper functioning of the ULTSMB.

36. Workshop participants recommended that ULTSMB members serve no more than two consecutive terms.

37. D.96-10-066 stated that ULTSMB members should be compensated for the expenses they incur to participate in the ULTSMB.

38. D.97-09-0117 and D.97-04-044 established a policy for per diem and expense reimbursement for members of the Low Income Governing Board and the California Board for Energy Efficiency.

39. Resolution F-621, dated November 9, 1988, established standards for the amount and type of expenses that should be reimbursed for advisory boards and committees.

40. A conflict of interest would occur if ULTSMB members' organizations directly or indirectly obtain funds from the ULTSMB.

41. Conflicts of interest can be addressed by requiring the ULTSMB to comply with the FPPC standard Conflict of Interest Code (2 Cal. Code of Regulations, § 18730).

42. Government Code § 18730 (b)(7) mandates that statements of economic interests be reported on forms prescribed by the FPPC.

43. The ULTSMB is a "state body" under Government Code § 11121.8.

44. D.97-09-117 provides guidance on several issues related to compliance with the Bagley-Keene Open Meeting Act.

45. Section IV.11 of the charter for the ULTS Trust Committee requires an annual audit of the ULTS Trust.

46. This decision imposes new obligations on the ULTS Trust Committee which will require the ULTS Trust Committee to revise its charter in order to carry out the new obligations.

Conclusions of Law

1. The highest priority for the ULTSMB is to provide basic telephone service to households that are currently without such service and which qualify for the ULTS program. The second highest priority is to close the gap between the total number of households with phone service that qualify for the ULTS program and the total number of such households that use the program.

2. The ULTSMB should conduct market studies to obtain reliable information regarding the total number of households that qualify for the ULTS program broken down by those households that are without phone service, those with phone service but not using the ULTS program, and those which use the ULTS program.

3. The overall marketing strategy for the ULTSMB should be to achieve with the available funds the greatest reduction possible in the number of households without phone service and the greatest increase possible in the use of the ULTS program among those who qualify for the program. The ULTSMB should continually monitor and revise its marketing campaigns, as necessary, to assure that the overall marketing strategy is achieved.

4. The ULTSMB's contracts with advertising agencies, CBOs, and other entities should set clear numerical goals for: (a) reducing the number of households that qualify for the ULTS program and which are currently without phone service; and (b) closing the gap between the total number of households using the ULTS program and the actual number of qualified households using the program.

5. Beginning in the year 2000, the ULTSMB should only contract with entities that have proven to be the most-cost effective in achieving the goals identified in Conclusion of Law No. 4. The ULTSMB should also be allowed to contract with new entities that promise to be more cost-effective than the entities then under contract.

6. The ULTSMB should not make policy recommendations to the Commission regarding the ULTS program.

7. Pending the approval of the ULTSMB's 1998 budget, the ULTS Trust Committee should: (a) reimburse the members of the ULTSMB for their costs to attend meetings of the ULTSMB such as per diem and travel costs; and (b) pay for the marketing studies described in Conclusion of Law No. 2.

8. Except for the marketing studies described in Conclusion of Law No. 2, no funds should be provided for marketing activities until the ULTSMB completes the development of its initial marketing campaigns.

9. The ULTSMB's contracts should be approved by Commission staff and signed by a majority of the ULTSMB's members.

10. The ULTSMB should comply with the State's contracting and procurement rules, and keep records sufficient to demonstrate its compliance with these rules.

11. The ULTS Trust Committee should use monies in the ULTS Trust to make the payments required by ULTSMB contracts which have been executed by the Board and reviewed and approved by Commission staff.

12. To initiate a payment by the ULTS Trust Committee, the ULTSMB should provide the ULTS Trust Committee with a payment voucher. All payment vouchers should be signed by a majority of the ULTSMB's members.

13. The ULTSMB should retain a copy of all its payment vouchers and related information; and the ULTS Trust Committee should keep a record of all its payments made pursuant to the vouchers.

14. The ULTSMB should obtain administrative, clerical, legal, and other necessary support services from Commission staff and the ULTS Trust Committee. If these resources prove insufficient, the ULTSMB should procure support services on a short-term and temporary basis.

15. Each telecommunications carrier holding company should be limited to a single member on the ULTSMB.

16. Each CBO member in the ULTSMB should represent a broad cross section of consumers, the public interest, and geographic regions; and each CBO member should have some knowledge and experience in telecommunications and the ULTS program.

17. The ULTSMB should be expanded to include a non-voting member appointed by the Director of the Telecommunication Division to act as a liaison between the ULTSMB and the Commission.

18. The persons identified in Appendix A to this decision should be appointed to the ULTSMB for the terms specified in Appendix A.

19. The members of the ULTSMB appointed by this decision should immediately solicit candidates for the carrier positions in the ULTSMB that are vacant as of the date of this decision. These vacant carrier positions should be filled using the procedure described in the body of this decision.

20. The Directors of the CSD and the Telecommunications Division should provide written notification to the members of the ULTSMB of the name of the staff person that each Director has designated to serve on the ULTSMB. Each Director should be able to change the staff person that he or she has designated to serve in the ULTSMB at any time by providing written notice to the other members of the ULTSMB.

21. The ULTSMB's CBO members should serve for staggered terms of two years, and carrier members should serve for staggered terms of three years. Representatives from CSD and the Telecommunications Division should have no fixed terms.

22. No person should serve more than two terms in the ULTSMB except that appointment to a position with less than a full term remaining should not count towards the prohibition against serving more than two terms.

23. The terms of the initial members of the ULTSMB should commence on the effective date of this decision. The initial two-year terms should expire on December 31, 1999, and the initial three-year terms should expire on December 31, 2000.

24. The terms of future ULTSMB members should commence on January 1 and expire on December 31.

25. Members of the ULTSMB should receive per diem and expense reimbursement in accordance with the general policy established in D.97-09-117 and D.97-04-044, and as stated in the body of this decision.

26. Members of the ULTSMB should receive expense reimbursement in accordance with the standards set forth in Resolution F-621, dated November 9, 1988, and as stated in the body of this decision.

27. Claims for per diem and expense reimbursement should be approved by a Program Manager or equivalent level in the Telecommunications Division. The ULTS Trust Committee should take the steps necessary to make the actual payments for per diem and expense reimbursement using money from the ULTS Trust.

28. The annual audit performed in accordance with Section IV.11 of the ULTS Trust Committee's charter should be expanded to include an examination of the financial statements of the ULTSMB. This audit should also examine: (a) the veracity and accuracy of claims for per diem and expense reimbursement by ULTSMB members; (b) whether payments to ULTSMB contractors were made in accordance with contractual terms and conditions; and (c) whether the contractual services paid for were actually provided. A copy of the audit should be provided to the Directors of the Consumer Services Division and the Telecommunications Division.

29. Members of the ULTSMB and the ULTS Trust Committee who are not members of the Commission staff are uncompensated servants of the State of California within the meaning of Government Code § 810.2. The State should indemnify them as it indemnifies its compensated employees, and provide them with representation for their acts done within the course and scope of the services they perform for the ULTSMB pursuant to Government Code §§ 825-825.6 and 995-996.6.

30. The ULTSMB and ULTS Trust Committee should each purchase E&O insurance for its own members for their acts done within the course and scope of the services they perform for ULTSMB to the extent that such activities are held to be indemnified by the State under Government Code §§ 825-825.6 or 995-996.6.

31. Only persons who are not part of an organization that receives funds from the ULTSMB should be appointed to the ULTSMB.

32. Organizations with representatives in the ULTSMB should not receive funds from the ULTSMB.

33. All voting members in the ULTSMB should comply with the Fair Political Practices Commission's standard Conflict of Interest Code, 2 Cal. Code of Regulations § 18730. For purposes of applying these rules, "designated employees" should be defined as all voting members of the ULTSMB; and the ULTSMB should use the "disclosure categories" enumerated in the body of this decision.

34. To fulfill the mandate in Government Code § 18730 (b)(7) that statements of economic interests be reported on forms prescribed by the FPPC, the ULTSMB should designate one of its members as responsible for obtaining the necessary reporting forms. This same person should also collect the statements of economic interests from ULTSMB members and timely submit these forms to the Commission's filing officer.

35. The Telecommunications Division, in consultation with the Legal Division, should advise the Commission if changes are needed to the conflict of interest rules applicable to the ULTSMB.

36. The ULTSMB should hold its initial meeting no later than 30 days from the effective date of this decision.

37. The annual report to the Commission that the ULTSMB is required to submit pursuant to D.96-10-066 should be expanded to include the information specified in the body of this decision. The ULTSMB's annual report should be signed by all of its members.

38. The ULTSMB should submit to the Commission as soon as possible a proposed budget for calendar year 1998 and a draft charter for the ULTSMB.

39. The Telecommunications Division should prepare for the Commission's consideration a resolution that establishes the 1998 budget for the ULTSMB and enacts a charter for the ULTSMB.

40. On October 1 of each year, the ULTSMB should submit to the Commission a package that contains: (a) the ULTSMB's proposed budget for the following calendar year; (b) the ULTSMB's annual report; and (c) the names and resumes of candidates to fill expiring positions in the ULTSMB.

41. The ULTSMB should provide public notice in the Commission's Daily Calendar of the package described in Conclusion of Law No. 40. The notice should also provide information on: (a) how to obtain any of the documents submitted with the package; and (b) how to submit written comments on one or more of the candidates for the ULTSMB to the Director of the Telecommunications Division by no later than 30 days from the date the notice appears in the Daily Calendar.

42. In December of each year the Director of the Telecommunications Division shall prepare one or more resolutions that: (a) authorizes the ULTSMB's budget for the following calendar year; and (b) appoints members to the ULTSMB.

43. The Executive Director should serve a copy of this decision on the members of the ULTS Trust Committee which should revise the Committee's charter in light of this decision. The ULTS Trust Committee should submit a draft revised charter to the Director of the Telecommunications Division, who should then prepare for the Commission's consideration a resolution regarding the adoption of the revised charter.

44. The Universal Lifeline Telephone Service Marketing Working Group formed in D.96-10-066 should be renamed the Universal Lifeline Telephone Service Marketing Board.

45. Commission staff has discharged its obligation under Ordering Paragraph 14.c. of D.96-10-066 to hold a workshop to (a) determine who is interested in serving in the ULTSMWG and (b) discuss the composition, role, and purpose of the ULTSMWG.

46. Commission staff has discharged its obligation under Ordering Paragraph 14.c.(1) of D.96-10-066 to submit a workshop report and the names of persons interested in serving in the ULTSMWG.

47. This decision fully implements Ordering Paragraph 14.c.(1) of D.96-10-066 which stated that the Commission would issue a decision regarding the role, purpose, and composition of the ULTSMWG.

48. The following order should be effective immediately.

I N T E R I M O R D E R

IT IS ORDERED that:

1. The Universal Lifeline Telephone Service Marketing Working Group formed in Decision (D.) 96-10-066 is renamed the Universal Lifeline Telephone Service Marketing Board (ULTSMB).

2. The ULTSMB shall use 80% of its marketing budget to bring basic telephone service to households that are without such service and which qualify for the Universal Lifeline Telephone Service (ULTS) program. The ULTSMB shall use the remaining 20% of its marketing budget to close the gap between the total number of residential customers with phone service who qualify for the ULTS program and the total number of such customers who actually use the program.

3. As the ULTSMB achieves success in reducing the number of households without basic telephone service, the ULTSMB may shift more of its marketing budget to closing the gap between the total number of households with phone service that qualify for the ULTS program and the total number of such households that actually use the program.

4. The ULTSMB shall conduct market studies to determine the total number of households that qualify for the ULTS program. The results of these studies are to be broken down by those households that are without phone service, those with phone service but not using the ULTS program, and those which use the ULTS program.

5. The overall marketing strategy of the ULTSMB shall be to achieve with the available funds the largest reduction possible in the number of households without phone service and the largest increase possible in the use of the ULTS program among those who qualify for the program. The ULTSMB shall continually assess the extent

that its marketing campaigns are achieving the overall marketing strategy and modify its marketing campaigns, as necessary, to achieve the overall marketing strategy.

6. Once the ULTSMB has formulated a coherent plan to accomplish the strategy described in Ordering Paragraph No. 5, the ULTSMB shall contract with qualified advertising agencies, Community Based Organizations (CBOs), and other entities to execute the plan.

7. All of the ULTSMB's contracts with advertising agencies, CBOs, and other entities shall contain clear numerical goals for: (a) reducing the number of households which qualify for the ULTS program that are without phone service; and (b) closing the gap between the number of households with phone service that qualify for the ULTS program and the actual number of such households using the program. The contracts shall also include incentives to exceed numerical goals as well as a penalties for failure to achieve numerical goals.

8. Beginning in the year 2000, the ULTSMB shall only contract with entities that have proven to be the most cost effective in achieving the goals stated in Ordering Paragraph No. 7. The ULTSMB may also contract with new entities that promise to be more cost effective than the entities then under contract.

9. The ULTSMB shall not make policy recommendations to the Commission regarding the ULTS program.

10. The ULTSMB's annual budget for all future years shall not exceed an amount equal to the average of the annual ULTS marketing expenses that were reimbursed to all carriers during for the three-year period ending on September 30, 1996.

11. Pending the approval of the ULTSMB's budget for 1998, the ULTS Trust Administrative Committee (ULTS Trust Committee) shall take the steps necessary to: (a) reimburse the members of the ULTSMB for costs associated with the meetings of the ULTSMB such as per diem and travel costs; and (b) pay for one or more marketing studies described in Ordering Paragraph No. 4.

12. Except for the marketing studies described in Ordering Paragraph No. 4, no funds shall be provided for marketing activities until the ULTSMB completes the development of its initial marketing campaigns.

13. The ULTSMB shall comply with the State's contracting and procurement rules, and shall keep records sufficient to demonstrate its compliance with these rules.

14. The ULTSMB's contract shall be reviewed and approved by Commission staff; and each ULTSMB contract shall be signed by a majority of the ULTSMB's members.

15. The ULTS Trust Committee shall take the steps necessary to use monies held by the ULTS Trust to make the payments required by the contracts entered into by the ULTSMB.

16. To initiate a payment by the ULTS Trust Committee, the ULTSMB shall provide the ULTS Trust Committee with a payment voucher that contains sufficient information for the ULTS Trust Committee to make the payment. All payment vouchers shall be signed by a majority of the ULTSMB's members.

17. The ULTSMB shall retain a copy of all payment vouchers and related information; while the ULTS Trust Committee shall keep a record of all its payments made pursuant to the vouchers.

18. Each telecommunications carrier holding company shall be limited to a single member in the ULTSMB.

19. The Director of the Telecommunication Division shall appoint one staff person to attend ULTSMB meetings as a non-voting member and to serve as a liaison between the ULTSMB and the Commission.

20. The persons identified in Appendix A to this order are appointed to the ULTSMB as of the effective date of this order.

21. Within 20 days from the date of this order, the Director of the Consumer Services Division (CSD) shall provide written notification to the members of the ULTSMB of the name of the CSD staff person designated to serve in the ULTSMB.

22. Within 20 days from the date of this order, the Director of the Telecommunications Division shall provide written notification to the members of the

ULTSMB of the name of the Telecommunications Division staff person designated to serve in the ULTSMB as a liaison between the ULTSMB and the Commission.

23. The ULTSMB shall solicit candidates for the carrier positions in the ULTSMB that are vacant as of the date of this order. The ULTSMB shall publish the name of each candidate in the Commission's Daily Calendar along with instructions on how to obtain the resume of the candidate and how to submit comments on the candidate to the Director of the Telecommunications Division. If no opposition to the candidate is received within 30 days from the date the candidate's name appeared in the Daily Calendar, the Executive Director may appoint that person to the ULTSMB. If timely opposition is received, the Telecommunications Division shall prepare a resolution for our consideration on whether to appoint the candidate to the ULTSMB. The previously described procedure shall be followed until all the carrier vacancies in the ULTSMB as of the date of this order are filled.

24. The procedure described in Ordering Paragraph No. 24 shall be used to fill vacancies in the ULTSMB created when a member leaves the ULTSMB prior to the expiration of his or her term.

25. The Directors of CSD and the Telecommunications Division may change the person each has designated to serve in the ULTSMB at any time by providing written notice to the other members of the ULTSMB.

26. The CBO representatives in the ULTSMB shall serve for staggered terms of two years, and carrier representatives shall serve for staggered terms of three years. The ULTSMB's representatives from CSD and the Telecommunications Division shall have no fixed terms.

27. In order to provide for staggered terms, one of the CBO members shall initially serve for two years while the other two CBO members shall initially serve for three years. Similarly, half of the carrier members shall initially serve for two years and the other half shall initially serve for three years. The initial two-year terms shall expire on December 31, 1999, and the initial three-year terms shall expire on December 31, 2000.

28. No person shall serve more than two terms in ULTSMB. Appointment to a position with less than a full term remaining shall not count towards the prohibition against serving more than two terms.

29. In the future, the terms of ULTSMB members shall commence on January 1 and expire on December 31.

30. Qualifying members of the ULTSMB shall receive a per diem of \$300 for each day of meetings and \$200 if the meeting lasts for less than approximately two hours. There shall be no per diem for preparation work; and there shall be no per diem or expense reimbursement related to meetings of any subcommittees of the ULTSMB.

31. ULTSMB shall not provide per diem or expense reimbursement to Board members who are employees of utilities or California State governmental agencies.

32. For each ULTSMB member who is an employee of a non-State governmental agency, trade association, or consumer group, payments for per diem and expense reimbursement related to the member's participation in the ULTSMB shall go to the member's employer unless the member can show justification for receiving these monies directly.

33. The payment of expense reimbursement to members of the ULTSMB shall comply with the standards set forth in Resolution F-621, dated November 9, 1988.

34. Claims for per diem and expense reimbursement shall be approved by a Program Manager or equivalent level in the Commission's Telecommunications Division. The ULTS Trust Committee shall take the steps necessary to make the actual payments for per diem and expense reimbursement using monies from the ULTS Trust.

35. The annual audit of the ULTS Trust performed in accordance with Section IV.11 of the ULTS Trust Committee Charter shall be expanded to include an examination of the financial statements of the ULTSMB. This audit shall also examine: (a) the veracity and accuracy of claims by ULTSMB members for per diem and expense reimbursement; (b) whether payments to ULTSMB contractors were made in accordance with contractual terms and conditions; and (c) whether the contractual services paid for were

actually provided. A copy of the audit shall be provided to the Directors of the CSD and the Telecommunications Division.

36. Members of the ULTSMB and the ULTS Trust Committee shall be indemnified for their acts done within the course and scope of the services they perform for the ULTSMB pursuant to Government Code §§ 825-825.6 and 995-996.6.

37. No person who is part of an organization that receives funds from the ULTSMB shall be appointed to the ULTSMB. All candidates for the ULTSMB shall disclose any association they may have with organizations receiving funds from the ULTSMB.

38. Organizations with representatives in the ULTSMB shall not receive funds from the ULTSMB. All members of the ULTSMB shall disclose any association they may have with organizations seeking funds from the ULTSMB.

39. Each voting members of the ULTSMB shall comply the Fair Political Practices Commission (FPPC) standard Conflict of Interest Code, 2 Cal. Code of Regulations § 18730.

40. The ULTSMB shall designate one of its members to be responsible for obtaining the forms prescribed by the FPPC for reporting statements of economic interests. This same person shall also collect the statements of economic interests from the members of the ULTSMB and timely submit these forms to the Commission's filing officer.

41. The ULTSMB or Telecommunications Division, after consulting with the Legal Division, shall advise the Commission if the conflict of interest rules applicable to the ULTSMB need to be revised.

42. The ULTSMB shall comply with the Bagley-Keene Open Meeting Act set forth in Government Code, §§11120, et seq.

43. The ULTSMB shall submit an annual report to the Commission that includes the information specified in D.96-10-066 and in the body of this decision. The ULTSMB's annual report shall be signed by all of its members. The ULTSMB shall also provide a copy of its annual report to each Commissioner, the assigned Administrative Law Judge, and the Directors of the CSD and the Telecommunications Division.

44. Beginning on October 1, 1998, and on October 1 of each year thereafter, the ULTSMB shall file with the Commission's Docket Office a package that contains: (a) the ULTSMB's proposed budget for the following calendar year; (b) the ULTSMB's annual report; and (c) the names and resumes of candidates to fill expiring positions in the ULTSMB.

45. The ULTSMB shall cause notice of the candidates for vacant ULTSMB positions to appear in the Commission's Daily Calendar by no later than November 1. The notice should provide instructions on how to obtain the candidates' resumes and how to provide written comments on one or more of the candidates to the Director of the Telecommunications Division by no later than 30 days from the date the notice appears in the Daily Calendar.

46. The ULTSMB shall cause notice of each annual report and proposed budget to appear in the Commission's Daily Calendar along with instructions on how to obtain these documents.

47. Beginning in December 1998 and for every December thereafter, the Director of the Commission's Telecommunications Division shall prepare one or more resolutions for our consideration that: (a) authorizes the ULTSMB's budget for the following calendar year; and (b) appoints members to fill vacancies in the ULTSMB created by expiring terms.

48. The ULTSMB shall hold its initial meeting within 30 days from the effective date of this order.

49. Within 120 days from the effective date of this order, the ULTSMB shall submit to the Director of the Telecommunications Division the following: (a) a draft charter that conforms to the instructions in this decision regarding contracting, per diem, expense reimbursement, indemnification, conflicts of interest, and compliance with the Bagley-Keene Open Meeting Act; and (b) a proposed budget for calendar year 1998. The Director of the Telecommunications Division, after consulting with the Legal Division on the draft charter, shall prepare for our consideration a resolution regarding the adoption of the ULTSMB's charter and budget for 1998.

50. The Executive Director shall serve a copy of this decision on the members of the ULTS Trust Committee.

51. Within 120 days from the effective date of this order, the ULTS Trust Committee shall submit to the Director of the Telecommunications Division a revised charter that conforms to the instructions in this decision regarding contracting, per diem, expense reimbursement, indemnification, conflicts of interest, and compliance with the Bagley-Keene Open Meeting Act. The Director of the Telecommunications Division, after consulting with the Legal Division on the revised charter, shall prepare for our consideration a resolution regarding the adoption of the revised charter of the ULTS Trust Committee.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

APPENDIX A**Appointments to the ULTSMB
R.95-01-020/I.95-01-021**

Name	Organization	ULTSMB Position	Initial Term
Paul Turner	Pacific Bell	Large/Medium LECs	3 Years
Fred Hesse	GTEC	Large/Medium LECs	3 Years
Vacant	*****	Large/Medium LECs	2 Years
Barry Ross	California Telephone Association	Small LECs	3 Years
Gary Beckman	AT&T	CLCs/IECs	2 Years
Beatriz Molina- Amparan	TCI Telephony Services. of California, Inc	CLCs/IECs	3 Years
Vacant	*****	CLCs/IECs	2 Years
Vacant	*****	Wireless Carriers	2 Years
Virginia Taylor	California Department of Consumer Affairs	CBO	3 Years
Mateo Camarillo	Chicano Federation of San Diego County/Public Advocates	CBO	2 Years
Barbara Perkins	National Council of Negro Women Woman/The Greenling Institute	CBO	3 Years
Consumer Services Division	Commission	Commission	Indefinite
Telecommunications Division	Commission	Commission	Indefinite